

FILED
JN
04 FEB -2 PM 3:09
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

SAMEEH HAMMOUDEH

ORDER

This cause came on for consideration upon Defendant Sameeh Hammoudeh's Motion to Set Bail (Dkt. #407) and the government's response thereto.¹ After close consideration, this Court concludes that the motion should be denied because there has been no change in circumstances to reasonably assure this Court of Hammoudeh's appearance and the safety of the community if this Court released Hammoudeh from pretrial detention.

I. BACKGROUND

This is a criminal action against members of the Palestinian Islamic Jihad (the "PIJ") who purportedly operated and directed organizational and fundraising activities on United States soil for almost twenty years. The PIJ is an organization that uses violence (principally suicide and car bombs) and threats of violence to pressure Israel to cede territory to the Palestinian people. On February 19, 2003, the government indicted the Defendants² in a fifty

¹Hammoudeh explicitly withdrew his previous motions for review of the detention order (Dkts. #367, 382) when he filed the current motion.

²For purposes of this Order when this Court uses the word "Defendants" it is only referring to Defendants Al-Arian, Hammoudeh, Ballut, and Fariz, who are the four defendants out of the eight (continued...)

438

count indictment that included counts for: (1) conspiracy to commit racketeering (Count I); (2) conspiracy to commit murder, maim, or injure persons outside the United States (Count II); (3) conspiracy to provide material support to or for the benefit of foreign terrorists (Counts III and IV); (4) violations of the Travel Act (Counts V-XLIV); (5) violation of the immigration laws of the United States (Counts XLV and XLVI); (6) obstruction of justice (Counts XLVII); and (7) perjury (Counts XLVIII-L).

The Indictment alleges a pattern of racketeering activity beginning in 1984 lasting through February 2003,³ which included murder, extortion, money laundering, violations of the Travel Act, conspiracy to kill, maim or injure persons outside the United States, providing material support to a Foreign Terrorist Organization (“FTO”), and immigration fraud. The Indictment details some two hundred fifty-six overt acts, ranging from soliciting and raising funds to support the PIJ and its illegal activities to providing management, organizational, and logistical support for the PIJ.

On February 20, 2003, the government arrested Defendants. At their initial appearances, the government moved to detain Defendants. At that time, all Defendants requested a continuance of the detention hearing. On February 25, 2003, all Defendants again requested a continuance. On March 20, 21, 24, and 25, 2003, the magistrate held a detention hearing. On April 10, 2003, the magistrate promptly ruled on Defendants’ pretrial

²(...continued)
indicted defendants currently before this Court.

³The other conspiracy counts allege different durations.

detention, ordering Hammoudeh and Al-Arian detained and Ballut and Fariz released on certain conditions (Dkt. #74).

A. THE DETENTION ORDER

In its Order detaining Hammoudeh, the magistrate made certain findings on the factors relevant to pretrial detention. First, the magistrate found that the government had “substantial” evidence supporting the Indictment of Hammoudeh. According to the government, members of PIJ’s governing body, the shura council, agreed that the PIJ should pay Hammoudeh a salary. Additionally in April 1994, Al-Arian told another shura council member that Fathi Shiqaqi (one of the founders and former secretary general of the PIJ) should pay Hammoudeh \$19,000 in back pay. A week later, Shiqaqi sent \$19,984.50 to Hammoudeh’s bank account. Also, Hammoudeh worked with co-defendants Al-Arian, Shallah and unindicted co-conspirator Al-Najjar at USF and the World and Islam Studies Enterprise, Inc. (“WISE”) and with Al-Arian and Al-Najjar at the Islamic Academy of Florida, Inc. (“IAF”).⁴ Further, Hammoudeh met with Al-Arian and Al-Najjar soon after Al-Arian learned that Fathi Shiqaqi had been murdered. Finally, Hammoudeh sent considerable sums of money to the Middle East from 2000-2002 despite earning modest sums of money each year.⁵

⁴The government claims that Wise and IAF were part of or fronts for the PIJ criminal enterprise.

⁵At the detention hearing and again at the bail hearing, Hammoudeh proffered and submitted evidence showing that the money was raised at a mosque in Tampa and that the money was sent to
(continued...)

Second, the magistrate found that Hammoudeh had vastly different public and private personas. Publicly, Hammoudeh was a prominent local leader and model of civil involvement who was married and had six children. Hammoudeh was well educated, lacked any criminal history, and had many family, friends, and community leaders who were willing to testify about his good character. Additionally, while not a United States citizen, Hammoudeh had been a legal resident of the United States for more than ten years. Privately, Hammoudeh's life was very different and dominated by the PIJ, its values, and advocacy of continued violence in the Middle East. It appeared to the magistrate that time and time again Hammoudeh was willing to risk harm to himself, his family, and his good reputation to further the cause of the PIJ.

Based on these findings, the magistrate concluded that the government had proven by the appropriate burdens that Hammoudeh was a danger to the community and a risk to flee this country.⁶ Further, the magistrate concluded that no combination of conditions on his release would ensure his appearance in court or the safety of the community.⁷ In part, these

⁵(...continued)
charities in Palestine and to purchase stock in a Palestinian corporation.

⁶The magistrate pointed to the government's proffer of Hammoudeh's behavior since 1995 (when the government executed search warrants at WISE and Hammoudeh became aware of the government's investigation). Despite knowing about the investigation, Hammoudeh continued his involvement in the PIJ.

⁷The magistrate also concluded that there was no due process violation because even if Hammoudeh's pretrial detention stretched to thirty three months the government was not the cause of the delay, the charges were serious, and the government's evidence was substantial. Subsequent to the entry of the detention order, this Court granted Hammoudeh's motion for a continuance of the
(continued...)

conclusions were based on the presumption of dangerousness and flight along with the seriousness of the charges and the strength of the government's case.

B. HAMMOUDEH'S PROFFER AT THE BAIL HEARING

On December 23, 2003, Hammoudeh moved to set bail based on additional evidence not available at the detention hearing.⁸ On January 20, 2004, this Court held a hearing on Sameeh Hammoudeh's motion. At the hearing, Hammoudeh's counsel argued that additional evidence now existed indicating that the government's case against Hammoudeh was not as strong as proffered to the magistrate and that there were conditions of release which could assure Hammoudeh's presence and the safety of any other person.

First, Hammoudeh himself translated a number of the intercepted telephone calls and discovered that the government had mistranslated or misinterpreted them.⁹ For example, the government allegedly misidentified the "Sameeh" referred to in the recording on which the government bases its claim that Defendant was a salaried employee of the PIJ. This identification problem is evidenced by the fact that WISE paid Hammoudeh more than the

⁷(...continued)
trial until January 2005.

⁸Hammoudeh had previously sought review of the detention order. However, this Court never ruled on those motions because Hammoudeh requested extensions and continuances to file additional evidence. Hammoudeh has now withdrawn those previous motions.

⁹This misinterpretation allegedly is the result of the government utilizing arabic speakers who are not familiar with the Palestinian dialect. Hammoudeh challenges the government's proffer or interpretation of conversations contained in overt acts 31, 78, 103, 181, 202, 208, 209, 210, 211, 212, 213, 215, 216, 218, 220, 228, 229, 231, 232, 235, 241, 246, and 248. For many of these calls, Hammoudeh provided this Court with his translation and/or summary.

salary mentioned as being paid by the PIJ to the “Sameeh” identified in the recording. Similarly, Hammoudeh’s translations (along with some additional affidavits submitted at the second hearing) purportedly reaffirm that the money Hammoudeh sent to the Mid-East was from a mosque in Tampa and went to charities in Palestine and not the PIJ.

Second, Hammoudeh proffered that the \$19,000 he received in April 1994 was a donation to WISE and not payment for back salary as the government proffered. Hammoudeh wrote two checks the day after receiving the funds: (1) one to WISE for \$16,000; and (2) one to Shallah who was head of WISE at the time for the remainder. Hammoudeh also proffered that WISE later reimbursed him for the bank fees he incurred as a result of that transaction.

Third, Hammoudeh proffered that a number of the facsimiles that were allegedly sent to WISE were in fact sent to co-defendant Shallah on his personal telephone number and Hammoudeh did not have access to that facsimile machine.¹⁰ Moreover, Hammoudeh proffered that most of the facsimiles alleged in the Indictment either were directed to a co-defendant or requested a response from the recipient and the government had no recordings of Hammoudeh responding to a facsimile.

Fourth, Hammoudeh attempted to separate himself from Al-Arian and the notion that he was Al-Arian’s confidant. Hammoudeh proffered that he did not know Al-Arian or the other defendants until he came over to the United States in December 1992. Hammoudeh

¹⁰Hammoudeh challenges overt acts 146, 148, 149, 152, 153, 160 as facsimiles not being sent to Hammoudeh or to Wise, but to Shallah.

cited to the fact that his initial education in the United States was funded by a grant from the Palestinian Authority, which according to Hammoudeh is diametrically opposed to and necessarily mutually exclusive of a membership in the PIJ.

Finally, Hammoudeh argues that he is not a flight risk or danger to the community. He argues that neither the PIJ nor Hammoudeh have ever committed a violent act on United States soil. Further, Hammoudeh's children and wife are in the United States, and he cannot travel out of the United States because his travel documents are from the Palestinian Authority. If he was to return to Palestine, he would have to travel into areas controlled by the Israeli government, which would likely lead to his detention there as a suspected PIJ member. Finally, Hammoudeh argues that he should be released because of the lengthy amount of pretrial detention in this case.

C. GOVERNMENT'S RESPONSE

The government argues that there had been no change in circumstances and that Hammoudeh had raised many of these same arguments at the original detention hearing. The government also disputes that it has mistranslated or misinterpreted any of the intercepted telephone conversations. In addition, the government sought to discount Hammoudeh's proffer by providing this Court more detail on its previous proffer. For example, the government disclosed that the April 1994 \$19,000 transfer detailed in Overt Act 93 came from an account in the name of Fathi Abdullah, which was a joint PIJ account set up by Fathi

Shiqaqi and Ramadan Abdullah Shallah.¹¹ Moreover, the government indicated that it had traced approximately \$19,000 of transfers prior to April 1994 from WISE and the Muslim Women's Center to Hammoudeh. The government asserted that Hammoudeh's subsequent checks to WISE and Shallah were in effect repaying those groups for salary advances by those organizations¹² on behalf of the PIJ.

Similarly, the government sought to discount Hammoudeh's claim that he had nothing to do with the PIJ and did not know his co-defendants prior to entering this country by proffering that, before he entered this country, Hammoudeh received \$5,000 from Khalil Shiqaqi, brother of Fathi Shiqaqi (a founder and former head of the PIJ). At that time Khalil Shiqaqi was the head of WISE and worked with Al-Arian in Tampa.

Further, the government provided more detail on its previous proffer to show the level and extent of Hammoudeh's involvement in the PIJ. The government provided diagrams for numerous financial transactions both before and after 1995 and 1997, which showed Hammoudeh actively involved in transferring funds to the PIJ or PIJ activists. Additionally in October 2000 (as detailed in Overt Act 229), a senior advisor to Yasser Arafat talked with

¹¹Hammoudeh refers to co-defendant Shallah as Abdullah throughout his motion. This Court questioned Hammoudeh's counsel on who donated the \$19,000 of WISE. Hammoudeh's counsel proffered that it was a Mr. Abdullah who was a donor to WISE. It is unclear from the proffer whether the Mr. Abdullah Hammoudeh was referring to is the same Mr. Abdullah that is his co-defendant.

¹²The government contends that Al-Arian and other co-conspirators controlled those organizations.

Hammoudeh and told Hammoudeh that Arafat was giving the PIJ and other terrorist organizations permission to resume violent attacks against Israel.¹³

II. DISCUSSION

Hammoudeh urges this Court to set bail because of additional information discovered since the last detention hearing. Section 3142(f)(2) allows a detention hearing to be reopened if a judicial officer determines that new information exists, which was not known to the defendant during the original detention hearing, and that newly discovered information has bearing on whether the defendant is a flight risk or a danger to the community. See 18 U.S.C. § 3142(f)(2). To the extent that use of Section 3142(f)(2) is inappropriate in this case because this court was not the original judicial officer determining detention, Section 3145(b) provides that this Court with jurisdiction to review and amend a detention order. See 18 U.S.C. § 3145(b). This grant of jurisdiction would include the ability to hear additional evidence not considered by the magistrate. See United States v. King, 849 F.2d 485 (11th Cir. 1988).¹⁴

¹³The government implied that the senior advisor was getting Hammoudeh to pass this information on to the PIJ. In his motion, Hammoudeh proffered that the conversation was him talking to a religious advisor about current events in Palestine.

¹⁴In King, the Eleventh Circuit detailed the procedural options that a district court should employ when reviewing a detention order. See id. at 490-91. The Eleventh Circuit stated that:

If the district court, after reviewing the detainee's motion, determines that additional evidence is necessary or that factual issues remain unresolved, the court may conduct an evidentiary hearing for these purposes. In this instance, the district court must enter written factual findings and written reasons supporting its decision. Of course, if the district court concludes that the additional evidence

(continued...)

Under the Bail Reform Act, a magistrate or district court judge is to determine whether any condition or combination of conditions will reasonably assure a defendant's presence at trial and the safety of the community. See 18 U.S.C. § 3142. In determining risk of flight and dangerousness to the community, a court is to consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against a defendant; (3) the history and characteristics of a defendant; and (4) the nature and seriousness of the danger to any person or the community that would be posed by a defendant's release. See id. § 3142(g). In order to detain a defendant, the government must show that a defendant is a serious flight risk by a preponderance of the evidence and dangerousness to the community by clear and convincing evidence. See King, 849 F.2d at 489.

In this case, the government asserted (and Hammoudeh has not disputed) that, because of the charges against him, statutory presumptions exist that Hammoudeh is both a serious flight risk and a danger to the community.¹⁵ Hammoudeh may rebut these presumptions by producing or proffering evidence “to suggest that he . . . [is] not dangerous or not likely to flee if turned loose on bail.” United States v. Quartermaine, 913 F.2d 910, 916 (11th Cir.

¹⁴(...continued)

does not affect the validity of the magistrate's findings and conclusions, the court may state the reasons therefor and then explicitly adopt the magistrate's pretrial detention order.

Id. This Court concludes that a similar process should be employed when a court reopens a detention hearing to consider newly discovered evidence.

¹⁵Count II of the Indictment charges Hammoudeh with conspiracy to kill, maim, or injure persons in a foreign country in violation of 18 U.S.C. § 956(a)(1). The offense charged in this count is what entitles the government to the statutory presumptions.

1990) (quoting United States v. Hurtado, 779 F.2d 1467, 1479 (11th Cir. 1985)). Even if Hammoudeh rebuts the presumptions, the presumptions remain “as an evidentiary finding militating against release,” which is to be considered along with the other four factors. See id.; King, 849 F.2d at 488.

This Court has independently reviewed the record from the detention hearing. This Court has also considered the additional proffers made by Hammoudeh and the government at the second bail hearing. This Court agrees with the government that most of the newly discovered evidence is nothing more than what was already presented and argued to the magistrate at the detention hearing. This Court finds that the government’s case against Hammoudeh is substantial and Hammoudeh’s proffer does not significantly diminish the strength of the government’s case.

For example, Hammoudeh’s proffer that his salary from WISE was in excess of the amount indicated in the PIJ members’ conversation does not necessarily imply that Hammoudeh was not an employee of the PIJ. Moreover, the individuals identified in Overt Act 31 (the overt act detailing paying salaries to certain co-conspirators) were all employees of WISE, except for Nafi, which supports the government’s position that the Sameeh or Sameeh Hammoudeh referred to in that intercepted conversation was the Defendant. Similarly, Hammoudeh’s proffer concerning the \$19,000 donation for WISE that he personally received in April 1994 is belied by the government’s additional proffer that: (1) Hammoudeh had previously received advances for almost that same amount of money from

WISE and the Muslim Women's Center (entities controlled by co-defendants); (2) other co-conspirators had contemporaneously discussed that Hammoudeh was owed approximately the same amount of money by the PIJ; and (3) the account that the money came from was a PIJ account set up by Fathi Shiqaqi and Shallah.

Because Hammoudeh's proffer fails to significantly diminish the strength of the government's case, Hammoudeh has not rebutted either statutory presumption.¹⁶ Therefore, this Court adopts the magistrate's findings and conclusions and denies Hammoudeh's Motion.¹⁷

It is therefore **ORDERED** and **ADJUDGED** that:

1. Defendant Hammoudeh's Motion to Set Bail (Dkt. #407) is **DENIED**. This Court adopts and incorporates by reference into this Order the magistrate's findings and conclusions contained in the detention order (Dkt. #74) as to Defendant Hammoudeh.


¹⁶Even if he did, the existence of the presumption would militate against this Court releasing Hammoudeh from detention. While only briefly mentioned in Hammoudeh's motion, this Court would also reaffirm and emphasize the magistrate's findings and conclusions on the constitutionality of the length of detention in this case. In Quartermaine, the Eleventh Circuit implicitly adopted the Second Circuit's test to determine when the length of pre-trial detention violated the Constitution. 913 F.2d at 918. Under the Second Circuit's test, a court is to look at factors like the length of detention, responsibility of the government for the delay, and the strength of the evidence concerning flight risk. See id. In this case, the factors do not indicate that a lengthy pretrial detention would violate Hammoudeh's constitutional rights. This Court would expound on the magistrate's findings and conclusions to emphasize that Hammoudeh moved this Court to continue the trial in this matter until January 2005 after he had been detained. Therefore, the government has no responsibility for the delay of the trial. It would seem odd to this Court that a defendant could effect his own release from pretrial detention by moving for a continuance of the trial in a matter on due process grounds.

¹⁷Moreover, even if Hammoudeh was released by this Court, he is subject to a detainer by the Bureau of Immigration and Customs Enforcement.

2. Defendant Hammoudeh shall continued to be detained pending trial pursuant to the terms and conditions of the detention order (Dkt. #74) and any subsequent modifications by the magistrate or this Court.

3. Defendant Hammoudeh's Motions for Review of the Detention Order (Dkts. #367, 382) are **WITHDRAWN**. The Clerk is directed to terminate these motions (Dkts. #367, 382).

DONE and **ORDERED** in Tampa, Florida on this 2 day of ^{Feb.}~~January~~, 2004.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record
Law Clerk

F I L E C O P Y

Date Printed: 02/03/2004

Notice sent to:

— Walter E. Furr, Esq.
U.S. Attorney's Office
Middle District of Florida
400 N. Tampa St., Suite 3200
Tampa, FL 33602

8:03-cr-00077 jlh

— Daniel W. Eckhart, Esq.
Office of the U.S. Attorney
80 N. Hughey Avenue, Suite 201
Orlando, FL 32801

8:03-cr-00077 jlh

— Linda G. Moreno, Esq.
Law Office of Linda Moreno
1718 E. 7th Ave., Suite 201
Tampa, FL 33605

8:03-cr-00077 jlh

— William B. Moffitt, Esq.
Asbill Moffitt & Boss, Chtd.
The Pacific House
1615 New Hampshire Ave., N.W.
Washington, DC 20009

8:03-cr-00077 jlh

— Stephen N. Bernstein, Esq.
Stephen N. Bernstein, P.A.
P.O. Box 1642
Gainesville, FL 32602

8:03-cr-00077 jlh

— Bruce G. Howie, Esq.
Piper, Ludin, Howie & Werner, P.A.
5720 Central Ave.
St. Petersburg, FL 33707

8:03-cr-00077 jlh

— M. Allison Guagliardo, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa St., Suite 2700
Tampa, FL 33602

8:03-cr-00077 jlh

— Kevin T. Beck, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa St., Suite 2700
Tampa, FL 33602

8:03-cr-00077 jlh

— Wadie E. Said, Esq.
Federal Public Defender's Office
Middle District of Florida
400 N. Tampa St., Suite 2700
Tampa, FL 33602

8:03-cr-00077 jlh